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Lakeland Lounge of Jackson, Inc. v. City of Jackson, 973 F.2d 1255 (5th Cir. 1992)

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of the lower court's judgment without assigning error to its judgment. Irrespective of this, the 7th Circuit ruled that the NCAA's no-draft and no-agency rules were, in fact, reasonable. The rules were not terms of employment, nor did they force college football players to sell their services which would possibly have supported Banks' anti-competitive proposition. The Court pronounced that the respective rules served to maintain the distinction between amateur athletes and professional athletes.

-E.A.

LAKELAND LOUNGE OF JACKSON, INC. v. CITY OF JACKSON, 973 F.2D 1255 (5TH CIR. 1992).

The City of Jackson, Mississippi appealed from a ruling by the United States District Court for the Southern District of Mississippi. The ruling declared unconstitutional an amendment to a zoning ordinance restricting adult businesses to areas zoned for light industrial use and, with a use permit, to some areas in the central business district. The ordinance also restricted adult establishments from being within 250 feet of each other or within 1,000 feet of any residentially zoned property, church, school, park, or playground. The court permanently enjoined the enforcement of the ordinance.

The Fifth Circuit Court of Appeals stated that such an ordinance presumptively violates the First Amendment if it was "enacted for the purpose of restraining speech on the basis of its content," and that it must be "designed to serve a substantial government interest" and "may not unreasonably limit alternative avenues of communication." In establishing that a substantial government interest is served, the court held that the bad "secondary effects" of adult entertainment, such as a decrease in property values, increased crime, the movement of businesses elsewhere, and neighborhood blight, were properly relied upon by the city council when it drafted the ordinance. The court also held that the language of the amended ordinance indicated the council's concern with secondary effects.

The court further stated that any regulation must provide reasonable alternative avenues of communication for the protected expression. It held that a substantial number of potential sites exist as alternative locations for adult businesses. In finding that the Jackson City Council properly considered the secondary effects of adult business and provided sufficient alternative avenues of expression for them, the circuit court held that the amended ordi-

nance was constitutional and reversed the judgment of the district court, remanding the case for further proceedings as appropriate.

-J.B.K.

KING v. INNOVATION BOOKS, 976 F.2d 824 (2d Cir. 1992).

Allied Vision, Ltd. and New Line Cinema Corporation appealed from an order of the United States District Court for the Southern District of New York, which, under a claim based on section 43(a) of the Lanham Act (prohibiting use in commerce of "any false designation of origin, false or misleading description of fact, or false or misleading representation of fact" which is "likely to cause confusion . . . or to deceive as to [] affiliation, connection, or association"), granted a preliminary injunction in favor of Stephen King. A substantial part of a King short story entitled "The Lawnmower Man" was incorporated into a movie with the title "Stephen King's The Lawnmower Man." The injunction prohibited the use of a possessory credit, describing the motion picture "The Lawnmower Man" as "Stephen King's The Lawnmower Man," and prohibited the use of a "based upon" credit, representing that the movie was "based upon" a short story by King.

In affirming the preliminary injunction against the use of the possessory credit, the circuit court found both a likelihood of success on the merits of King's claim and irreparable harm should the injunction not be granted. The court stated that a possessory credit ordinarily is given to an individual who had some involvement in, and/or gave approval to, the screenplay or movie itself. King had no involvement in, and gave no approval of, "The Lawnmower Man" screenplay or movie, so the possessory credit was false on its face as it wrongfully attributed the movie to King in the eyes of the general public. The court held that the district court's granting of a preliminary injunction was proper because a presumption of irreparable harm arises in Lanham Act cases once the plaintiff establishes a likelihood of success on a claim of literal falseness.

In reviewing the grant of an injunction against the use of the "based upon" credit, the circuit court held that the district court did not have sufficient support in the testimony and applicable law to find the credit to be misleading and confusing to the public. The court stated that "where a movie draws in material respects from a literary work, both quantitatively and qualitatively, a 'based upon' credit should not be viewed as misleading absent persuasive countervailing facts and circumstances." The similarities between the